

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

|                              |   |               |
|------------------------------|---|---------------|
| PEOPLE FIRST OF TENNESSEE    | ) |               |
| et al.                       | ) |               |
|                              | ) |               |
| Plaintiffs                   | ) |               |
|                              | ) |               |
| v.                           | ) | No. 3:95-1227 |
|                              | ) | Judge Echols  |
| THE CLOVER BOTTOM            | ) |               |
| DEVELOPMENTAL CENTER, et al. | ) |               |
|                              | ) |               |
| Defendants                   | ) |               |

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|   |   |              |
|---|---|--------------|
| UNITED STATES OF AMERICA,               | ) |              |
|   | ) |              |
| Plaintiff,                              | ) |              |
|   | ) |              |
| v.                                      | ) | Civil Action |
|   | ) |              |
| STATE OF TENNESSEE, Donald Sundquist,   | ) |              |
| Governor of the State of Tennessee;     | ) |              |
| John Ferguson, Commissioner, Tennessee  | ) | Civil Rights |
| Department of Finance and               | ) |              |
| Administration; Marjorie Nell Cardwell, | ) |              |
| Commissioner, Tennessee Department of   | ) |              |
| Mental Health and Mental Retardation;   | ) |              |
| Dr. A. Jane Walters, Commissioner,      | ) |              |
| Tennessee Department of Education; )    | ) |              |
| Stanley Lipford, Superintendent,        | ) |              |
| Nat T. Winston Developmental Center,    | ) |              |
| O. Stephen Roth, Superintendent,        | ) |              |
| Clover Bottom Developmental Center,     | ) |              |
| Robert Erb, Superintendent,             | ) |              |
| Greene Valley Developmental Center      | ) |              |
|   | ) |              |
| Defendants.                             | ) |              |

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**SETTLEMENT AGREEMENT BETWEEN**  
**PEOPLE FIRST, THE UNITED STATES, AND THE STATE OF TENNESSEE**

## **SETTLEMENT AGREEMENT**

# SETTLEMENT AGREEMENT

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## SETTLEMENT AGREEMENT

### I. Scope of Settlement

A. This Settlement Agreement is entered into by People First of Tennessee, the United States of America (☞Plaintiffs☞), and the State of Tennessee (☞State Defendants☞). The Plaintiff, People First of Tennessee, asserts a class consisting of all persons who presently reside or will reside at Clover Bottom Development Center (including the Harold Jordan Center), Greene Valley Developmental Center or Nat T. Winston Developmental Center, and all persons who have resided there at any time since December 22, 1992. The parties agree to the certification of this class. This Settlement Agreement sets forth provisions for restructuring and enhancing Tennessee's state-wide system for the delivery of services to citizens who reside or have resided as of December 1992, or who will reside in the State's three regional developmental centers: Clover Bottom Developmental Center (including the Harold Jordan Center), Nashville; Greene Valley Developmental Center, Greeneville; and Nat T. Winston Developmental Center, Bolivar, Tennessee (hereinafter ☞citizens☞). The State Defendants hereby agree to take the following actions to guarantee protection of the federal statutory and constitutional rights of these citizens.

B. This Agreement draws upon the initial settlement agreement proposed by People First of Tennessee and the remedial plans developed and activities undertaken by State Defendants, including the Tennessee Quality Initiative (☞TQI☞), and



represents a consensus of the parties as to the most appropriate means of providing services to Tennessee citizens with developmental disabilities.

C. This Agreement, voluntarily entered into by the parties, shall be enforceable as an order of the Court by the parties and any member of the class approved by the Court. This Agreement is legally binding on and judicially enforceable by the parties as provided herein and it shall be applicable to and binding upon all of the parties, their officers, agents, employees, assigns and successors. This Agreement may not be used as evidence of liability in any other civil proceeding and is enforceable only by the parties.

## II. Preamble and Guiding Principles

The parties enter into this Settlement Agreement recognizing that their overriding common interest is in assuring that Tennessee's citizens with developmental disabilities are provided reasonable opportunities to grow and develop, exercise independence, and lead full and productive lives in a safe environment. This Agreement requires the restructuring and enhancement of Tennessee's state-wide delivery of services to these citizens in a way that recognizes the individuality of each citizen and understands the critical role of family members, guardians, and others who provide support and care. The following guiding principles are intended only to be used to aid in the interpretation of the operative provision of the Agreement, and are not intended to function as independently enforceable standards for meeting the terms

of this Agreement. Toward these ends, the parties acknowledge the following guiding principles.

A. Each citizen must be provided services in the least separate, most integrated setting appropriate to meet his or her individual needs.

B. All decisions regarding services for citizens must be person-centered, driven by the individual citizens, family members, guardians, advocates, and other interested persons, and made on an individualized basis by appropriate interdisciplinary teams of competent and qualified professionals with input from those persons.

C. Tennessee's programs and services must be designed to provide all citizens the reasonable opportunity to grow, develop, exercise independence, and to live full and productive lives.

D. Tennessee recognizes the need to provide services to each citizen in his or her home communities and to provide a broad array of living environments and services, including homes adapted to individual needs, health care and therapy, work at regular, meaningful, and compensated employment, opportunities to develop relationships with family, friends, neighbors, co-workers, helpers and support staff and community organizations, and participation in community activities.

E. All citizens must direct their own lives and be enabled to make meaningful choices about matters that are important to the person. Decisions about services and supports for each citizen shall be made by the citizen with the support of parents,



guardians, friends and advocates.

F. All programs developed pursuant to this Agreement shall be fully adequate to meet the needs of citizens served by them. No citizen shall be placed in a program which does not fully meet his or her needs and fully protect his or her health and well-being.

G. All citizens must be provided with adequate and appropriate health care services and such specialized health care services as may be needed to ensure their health and well-being.

H. All citizens must be protected from harm and unreasonable risks of harm and be protected from unnecessary physical and chemical restraint.

I. Each child covered by this Agreement must be provided a free, appropriate public school education in the least restrictive, most integrated setting appropriate to his or her needs in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. § 1400-1485. From the date of filing this Agreement, no child shall be removed from the regular educational environment as long as the child's education can satisfactorily be achieved in a regular class with supplementary aids, services and support.

J. All citizens, their families, guardians, care-givers and support personnel must be educated about their rights and responsibilities, and how to exercise them. All citizens shall be allowed to exercise their constitutional rights. In addition, all of these individuals must be provided current information about all available resources and

programs, and how to access them.

K. The quality of supports and services, consumer satisfaction, and the prevention of abuse and neglect is best assured by educated and involved citizens, family members, and other individuals who provide supports and services for the citizens.

L. State Defendants agree that a system of accountability, quality assurance and monitoring necessary to implement this Agreement, including quality control systems with internal monitoring, case management, investigations and data collection, are essential to maintaining quality and obtaining favorable outcomes.

M. Implementation of this Agreement will be most successful if there is good communication and collaboration among citizens, families, advocates, guardians, private service providers and government.

N. Resources and expertise now lacking at Tennessee's institutions need to be developed on an expedited basis to ensure that the rights of citizens are protected.

O. Each citizen will have a reasonable opportunity to choose from appropriate service providers, his or her living environments, his or her roommates, and his or her qualified support staff.

P. In the event a community placement is inappropriate for a citizen, the State will provide an appropriate alternative placement and service system to meet the citizen's needs.

### III. State Planning, Implementation and Oversight

A. The Tennessee Department of Mental Health and Mental Retardation (DMHMR) will continue to implement the statewide initiative embodied in the TQI. The Director of the TQI shall be a state employee. Within the structure of TQI, one individual will be assigned to coordinate statewide activity in each of the following content areas: Monitoring and Evaluation; Protection from Harm; Medical Care; Physical and Nutritional Management; Behavior Intervention; Habilitation; Physical Environment; Community Placement; Investigations of Alleged Abuse, Serious Accidents and Injuries, and Other Alleged Staff Misconduct; and Educational Services for School Age Children.

B. There will be a TQI Coordinator at each developmental center and at each regional Office of Community Services. The State Defendants shall assure that the central office of DMHMR and its regional Offices of Community Services (OCS) are sufficiently staffed to meet the requirements of this Agreement. To that end, within 30 days of filing this Agreement with the Court, the State Defendants shall conduct a needs assessment and develop a plan for the assignment and/or acquisition of staff for the central and regional offices to meet the requirements of this Agreement.

C. The TQI Director will be responsible for coordinating and monitoring compliance with all provisions of this Agreement and will identify variance within the system for timely correction.

D. State Defendants shall identify staff at the central and regional offices who will have responsibility for providing information about implementation of this Agreement and for responding to questions and communications from citizens, families and guardians. State Defendants shall publicize the names, office telephone numbers and responsibilities of these persons to all citizens, their families and guardians, and to all appropriate public agencies and private organizations and their personnel. State Defendants shall coordinate their information and public relations activities at the central and regional level with the DMHMR Office of Public Information and Education (OPIE).

E. State Defendants shall employ within one year of the signing of this Agreement, a well qualified and experienced developmental medicine physician to 1) exercise clinical supervision of the developmental center physicians, 2) participate in the selection, evaluation , and retention of medical specialists and other physicians, 3) provide ongoing in-service and individual consultation to the developmental center physicians and community physicians, and 4) participate in the transition planning for all citizens returning to the community from the developmental centers. This individual will be different from the person identified in paragraph IIIA above who is

responsible for Health Care under TQI.

F. State Defendants agree to make all reasonable efforts to pursue all sources of available federal and state funding to support the execution of their responsibilities under this Agreement. In selecting among alternatives that meet 1) the requirements of this Agreement, 2) the requirements of federal statutes, and 3) the professional judgment standard for constitutionally appropriate levels of care, it is agreed that it is for the State Defendants to consider the availability of resources, the cost-effectiveness of various programmatic and service options, e.g. the State's Home and Community-Based Waiver under Medicaid, and the overall burden on the State's budget.

G. The DMHMR will work with colleges, universities and University Affiliated Programs (UAPs) in the State of Tennessee to facilitate the establishment of courses of instruction and curricula designed to develop a pool of paraprofessionals and professionals with skills needed to provide effective services to citizens.

H. State Defendants shall collect data, and maintain records and record keeping systems adequate and appropriate to effectuate the terms of this Agreement. In this regard, State Defendants shall design and implement a statewide system for tracking outcomes for citizens in the service system, as well as other statewide data collection systems provided for herein.

#### IV. Evaluations and Assessment

##### A. Person-Centered Evaluations of Individual Citizens

1. Each individual citizen must receive a comprehensive person-centered evaluation of all of his or her individual medical, behavioral, habilitation and treatment needs, by competent professionals who are members of the IDT. Each citizen who is not recommended for community placement by the IDT must also receive an evaluation for community placement conducted by professionals independent of the Department of Mental Health and Mental Retardation who are agreed upon by the parties. Collectively, these evaluations will form the basis for each citizen's individualized plans, including Individual Support and Transition Plans (described herein at Section V.A.) and the health care and behavioral support plans that supplement the Individual Support and Transition Plans.

2. These person-centered assessments must be comprehensive and must analyze what is important to the citizen, his or her vision of the future, and his or her medical, behavioral, vocational, social and spiritual needs. They must draw upon communications with the individual being evaluated and family members or guardians, discussions with friends, support staff, and professionals familiar with the individual, the known medical, behavioral and social histories of the individual, and, when appropriate, evaluations from expert consultants. All assessments made pursuant to this section shall be based upon the individual needs and choices of the citizen and not on present availability of services. Any member of the IDT may make

additional recommendations for necessary services for the citizen and such additional recommendation(s) shall be submitted to the Quality Review Panel (as defined in Section X.A. below). The IDT may state its reasons for declining the recommendation(s). In such instances, the Administrator of the institution shall be informed of any necessary treatment decisions.

B. Assessment of Existing Services and Supports

1. State Defendants must make a comprehensive assessment of the services and supports needed by all citizens and a companion analysis of resources presently available in the community to meet these needs. This analysis shall form the basis of the Community Development Plan (as discussed in V.C.) for expanding or developing the full range of needed services.

V. Development of Plans, Services and Supports

A. Development of Individual Support and Transition Plans

1. Each citizen will have a person-centered Individual Support Plan (ISP) and, if appropriate, and Individual Transition Plan (ITP) (collectively referred to as Individual Support and Transition Plans (ISTPs)). An Individual Support Plan is the document that reflects the person's vision of a desired life. Each ISP shall be based on an individual assessment and include a description of the person's current life, functioning, a statement of the outcomes necessary to achieve the person's desired life, and a description of the actions, supports and services required and the persons and providers responsible for achieving the desired outcomes. These plans will be developed by teams consisting of the individual citizen, family members, guardians,

knowledgeable support staff, advocates and appropriate professionals, including professionals with expertise in developing and implementing such plans, as well as any person requested by the citizen. The State Defendants shall make reasonable accommodation(s) to include all such persons and must actively seek the input of these persons. The ISP will focus on the individual's needs, reflecting the value of supporting the person with relationships, productive work, participation in community life, personal decision-making, and training to become as self-sufficient as possible. When significant changes occur in a citizen's life situation, corresponding changes shall be made in the citizen's supports and services and shall be reflected in the ISTP.

2. The planning process will result in a written plan containing a detailed description of the identity, location, frequency and duration of the services and supports needed by the individual. Each citizen will choose his or her community service providers from available and qualified community service providers. The process will be coordinated by an Independent Support Coordinator (case manager).

3. Each citizen and his or her parent(s) or legal guardian(s) shall participate in the development of the Individual Support and Transition Plans (ISTPs) as members of the IDT. As members of the interdisciplinary team, and as important participants, the input of citizens and parents or guardians shall be encouraged and respected by the other members of the team.

4. Each citizen and his or her parent(s) or legal guardian(s) shall be informed of the recommendations of the independent evaluation and the IDT,



including all feasible alternatives to the provision of services in a developmental center. Each citizen and his or her parent(s) or legal guardian(s) shall be informed of their freedom of choice regarding participation in the Medicaid home and community-based waiver. The State Defendants shall ensure that this freedom of choice is offered and honored as required by federal Medicaid regulations. The State Defendants shall ensure that the citizens are provided services that meet the citizens' individual needs as set out in the ISTP.

5. State Defendants will ensure that citizens are placed in an appropriate and safe manner and that placements in the community are adequate to meet the needs of the individuals as presented in their ISTP. The nature of an individual's disability will not be a factor in the eligibility of that individual for community placement consideration. No citizen will be placed in a nursing home or board and care home unless approved by the Quality Review Panel and agreed to by the parties.

6. Each ISTP shall specify in detail the services and supports needed, including at home, in day activities or work and the specialized medical services, to serve the individual citizen in the community. All services and supports shall be integrated into the community to the maximum extent possible to implement effectively the ISTP. Transition services, such as home visits and overnights, as well as any other steps that need to be taken to ensure an orderly and smooth transition for the citizen, must also be included in the ISTP. All staff involved in the transition

process must be familiar with the individual who is moving.

7. Pre-service training for community staff must include: (a) First aid, CPR and the Heimlich maneuver; (b) general fire safety and evacuation; (c) incident reporting; (d) training specific to the needs of the individual. Within sixty (60) days of the date of employment, a community staff member's training must include: (a) individual rights and the Americans with Disabilities Act; (b) values and principles of TQI and this Agreement; (c) program planning and implementation; (d) principles of behavioral support; and (e) prevention and reporting of abuse and neglect. No citizen who is medically or behaviorally at risk shall live in a residence unless at least one staff person is on duty who is trained in first aid, CPR and the Heimlich maneuver.

8. For school age children, the ISTP shall also include a statement of the educational program, including related services and transportation services, to be provided each child. No child shall move to the community without an agreed-upon Individual Education Program (IEP). Placement notice consistent with the applicable state policy and procedure manual shall be obtained. The State Defendants must ensure that the placement is capable of providing the educational services required by the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1485 and the citizen's IEP and must coordinate such placement with the local educational agency. Educational services to citizens must comply with all applicable federal and Tennessee state laws with regard to special educational services to disabled children.

All placements of children in residential settings must also comply with all applicable Tennessee state laws with regard to special educational services to disabled children. All children should live with families.

9. State Defendants shall ensure that the community placement for each and every citizen meets the individual needs of the citizen, as identified in the ISTP. Under no circumstances will the speed or type of a placement be governed by anything other than the interests of the citizen being placed. State Defendants may use existing community program vacancies only where they have determined that the program meets the needs of the citizen as identified in the ISTP. State Defendants shall create or contract for a community program that meets the needs of the citizen as identified in the ISTP.

10. The provision of community services and supports to citizens shall be informed/guided by the scope of services provisions and the funding allocations set out in the State's Home and Community-Based Waiver under Medicaid which shall be written to support the execution of the State Defendants' responsibilities under this Agreement. The scope of services provisions and funding allocations under the Waiver shall not apply where the community services and supports required by an individual citizen under this Agreement cannot be met through the Waiver, where compliance with this Agreement can be achieved by pursuing other sources of federal funding, or in the event that substantial modifications in the federal Medicaid program significantly change the terms of the Waiver.

11. For each citizen at the developmental centers, an individualized transition profile will be developed by the IDT. The transition profiles will contain at least the following elements: 1) citizen's name, age, and sex; 2) communication ability/method/primary language; 3) diagnoses; 4) intellectual level and adaptive behavior level; 5) mobility; 6) hearing/vision acuity and dental status; 7) mealtime patterns and nutritional status; 8) type and frequency of supervision; 9) environmental adaptations/security needs; 10) general health condition and chronic and emergency health care needs; 11) preferred number and characteristics of housemates; 11) preferred geographic location; 12) a description of the person's important relationships and the name, location and frequency of contact of family and significant others; 13) anticipated adjustment issues; 14) supports and services needed for the individual's safety ; 15) the person's vision for the future; 16) a description of the individual's personality, skills and interests; 17) the "non-negotiables" for the person, that is, the things that person must have to be happy and that, if not available, would result in obvious distress; 18) the person's spiritual and religious preferences; 19) the person's support needs; and 20) the person's vocational interests.

12. The ISTP and the Independent Support Coordinator's (ISC) placement certification for each citizen will be filed with the Quality Review Panel. The Quality Review Panel will review each individual placement prior to such placement occurring. The Panel shall complete its review and report to the IDT within

twenty (20) days of receiving the ISTP and certification from the IDT unless the Panel requests additional time for a particular placement. The Panel's review will include review of relevant supporting documentation and issues raised by members of the IDT.

Such reviews shall determine the adequacy of the placement and ensure that the placement meets the individual needs of each citizen. Where the Panel determines that there are major deficiencies with a placement, the placement shall not occur until all the identified major deficiencies are corrected. Any other deficiencies shall be corrected in a timely manner.

13. Community placements shall provide a safe and humane environment in which individuals are provided daily opportunities to learn, develop and maintain skills. All services, including medical and other health related services including, but not limited to, physical therapy, occupational therapy, necessary technology, dental, speech, visual, hearing, nutrition, and psychology, must be adequate and appropriate to meet the individual needs of the citizens.

B. Development and Enhancement of Community Programs and Resources

1. State Defendants will provide each citizen appropriate developmental services in the most integrated setting consistent with his or her needs, and in a manner which promotes independence, enhances dignity and is as consistent as possible with the Guiding Principles of this Agreement.

2. State Defendants shall develop community living arrangements for all

citizens residing at the institutions for whom such living arrangements are called for by the individualized evaluations set forth in Section IV. A, above, together with the community services necessary to provide the citizens with adequate medical care and supports and services, as defined by the individual person-centered evaluations and planning process that is consistent with professional judgment, until such time as the citizen no longer is in need of such care and services.

3. State Defendants shall develop a support coordination system sufficient to ensure that the needs of each citizen placed in a community-based program pursuant to this Agreement are consistently reviewed and met. A description of this system shall be provided to the parties within thirty (30) days of the filing of this Agreement with the Court. Each citizen shall have an Independent Support Coordinator. Independent Support Coordination will be provided by individuals or organizations who are independent of the provision of direct service. No individual Support Coordinator may provide services to more than 30 persons. If a citizen requests a different Support Coordinator, State Defendants will take all reasonable measures to meet that request.

4. State defendants shall provide or can contract for adequate and appropriate training to the Individual Support Coordinators and to members of interdisciplinary teams in person-centered planning and individual support coordination, and in methods of eliciting active involvement in the process of persons who use services and their families, and in the functions of Individual Support

Coordination.

5. Independent Support Coordinators will be in regular, frequent contact with the people on their caseload in their homes, day activities and work sites.

Coordinators will observe participation in programs and therapeutic interventions and will evaluate the degree to which services in the individualized plan are being delivered, and whether quality and outcomes are achieved. In no event will ISCs visit each of their assigned citizens less than once every three weeks.

6. State Defendants shall 1) employ expert consultants in the area of specialized transition for individuals with challenging behaviors and dual diagnoses and for individuals with significant medical needs, and 2) implement the recommendations of these experts in the transition process.

7. State Defendants shall develop and implement a system to evaluate an individual's physical/medical status prior to, during, and after the transition from the developmental centers. State Defendants shall also develop and implement a comprehensive plan for the provision of health care to citizens living in the community. The plan shall specify a variety of strategies to ensure that all citizens are provided adequate medical and related services.

8. State Defendants shall develop and implement a comprehensive plan for mental health services, including inpatient services, medications practice and behavioral support, as well as the availability of necessary professional services. This plan shall focus on training and developing expertise in this area among professionals,

and expanding a crisis intervention system in each region to include emergency response and temporary augmented staff.

9. State Defendants shall develop an emergency respite service system in each region for children and adults. In their first six-month report to the Court and the parties, State Defendants shall include their plan for developing an emergency respite service system in each region for children and adults. This plan shall include specific actions steps to be taken to expand any such capacity already available in each region and how that capacity will be accessed and utilized. Wherever possible, emergency respite supports will be provided in the citizen's own home.

10. The State Defendants shall inform the citizen and/or his or her parent(s) or guardian(s) about his or her option to request a temporary six-month hold on a development center bed. If requested by a citizen and/or his or her parent(s) or guardian(s), at the time of the initial community placement, the State Defendants will hold a bed in a developmental center for six months thereafter, as close to the citizen's home county as possible, for as long as the State continues to provide services at the developmental centers. If the citizen and/or the parent(s) or guardian(s) believes that the community placement or service is not meeting the citizen's needs during this period, then they may request that the State Defendants time provide a choice of alternative placements or services. The State Defendants will immediately respond to such a request in accordance with the provisions of Section V.B.11 of this



Agreement. If, at the end of this six-month period, the community placement continues to meet the individual needs of the citizen, then the State Defendants will cease holding the developmental center bed. All community placements shall be made in accordance with applicable federal law and regulations. The citizen and/or the parent(s) / guardian(s) shall have all the due process and fair hearing rights provided for therein.

11. A request can be made at any time to change a community placement or service based on assertions of inadequate services or harm to the citizen. In response to such a request, the State Defendants shall immediately undertake the following actions as necessary to resolve the problem:

- a. ensure that the Independent Support Coordinator has taken all reasonable efforts to solve the problem;
- b. convene the IDT for review and assessment of the current placement and the Individual's ISTP, including an assessment of the support services and of the performance of community providers;
- c. initiate and/or review efforts to resolve failings and/or perceived failings in the support services with the citizen and/or the parent(s) / guardian(s), the community providers, and the State;
- d. ensure that all alternatives have been and are actively explored,

including utilization of the respite services to be developed in accordance with this Agreement, and have been properly assessed for appropriateness; and

- e. take whatever steps are necessary to resolve the situation either by addressing the failings in the current community placement (including an assessment of the adequacy of provider participation) or by providing or developing an adequate and appropriate alternative placement.

In addition to the steps enumerated above, if a request is made that a citizen return to a developmental center, the IDT shall determine whether the citizen's current provider is providing adequate services and if not, whether the inability to provide the requisite support services and to protect the citizen's well-being can be resolved. If the inability cannot be resolved, the State Defendants shall, on a priority basis, ensure that the citizen's ISTP is reassessed and begin to develop an appropriate alternative living environment, including the services provided to the citizen. Within 30 days of the signing of this Agreement, the State Defendants shall develop policies and procedures (including grievance procedures) addressing changes in community placements and the return by citizens to the developmental centers. These policies and procedures will be reviewed and approved by the Quality Review Panel. The State Defendants shall track complaints regarding adequacy of services by particular

providers, shall analyze this data for trends, and shall make this data available to the IDT and the Independent Support Coordinator, and the Quality Review Panel.

12. The State Defendants shall ensure that, for each citizen for whom the IDT has requested an advocate, an advocate is appointed through a process developed by the State Defendants after consultation with the parties, and that, for each citizen who needs a legal guardian, a legal guardian is appointed.

13. State Defendants shall allow and, to the extent possible, facilitate citizens to participate in community activities and communicate and meet with other citizens and citizen organizations, advocates, and members of religious and community organizations.

C. Community Development Plan

1. The State will develop a comprehensive implementation plan to develop the community services and supports consonant with this Agreement (the ~~Community Development Plan~~). The development of this plan shall include a participatory planning process that will encompass representatives of all ~~stakeholders~~ in the service system. Stakeholders are those who receive, provide, administer and monitor services and supports, including representatives of the parties to this Agreement, individuals in leadership positions within the State of Tennessee, citizens, family members and guardians, service provider and vendor executives and support staff. The Community Development Plan shall address at least the following areas:

a. Infrastructure (system design, agency roles, governance, resource

development)

- b. Support Coordination
- c. Financing and fiscal management
- d. Service provider and vendor development
- e. Housing
- f. Emergency and crisis intervention
- g. Access to medical care and therapy services
- h. Mental health/behavioral support
- i. Education for school age children
- j. Specialized Services
- k. Employment
- l. Transportation
- m. Citizen monies and personal property
- n. Recreation and leisure
- o. Family support
- p. Quality assurance, data collection, abuse and neglect prevention, investigations and monitoring
- q. Advocacy and grievance process
- r. Community involvement and public education

2. The process for developing the State Defendants' quality assurance portion of the Community Development Plan and the quality assurance plan for the

developmental centers shall address the following areas:

- a. High-quality Individual Support Planning and regular review of ISPs.
- b. Regular monitoring of service delivery and follow-up by support coordinators.
- c. Strengthening and empowering citizens with disabilities and their families through effective advocacy and consumer education.
- d. An easy-to-access process for dispute mediation.
- e. Standards that express clear expectations for performance.
- f. Increasing competence through training and technical assistance that is timely, practical and truly reflective of emerging knowledge.
- g. An administrative structure that enables and promotes the development of quality.
- h. Automated management information systems that make timely, accurate and dependable information available to management and field operations.
- i. Performance contracting and enforcement of standards through contract compliance.
- j. The development of effective mechanisms to detect, investigate and prosecute abuse and neglect.

3. Representatives of these stakeholders shall participate in the establishment of specific and measurable goals in each area that are consistent with the provisions and principles of this Agreement. In each subject area, the implementation

plan shall set forth specific objectives, assignments, implementations strategies and target dates. The Plan shall also identify the obstacles to the accomplishment of each goal and the methods and means, including resources, necessary for overcoming those obstacles. ☺Resources☹ include funding, personnel, and training and technical support.

4. To assist the participants in planning for support needed by citizens, State Defendants shall invite, encourage and otherwise facilitate participation in the planning process at the local level of individuals and groups from the citizens' home communities with knowledge and expertise in housing, transportation, health care and other needs of citizens (e.g., members of local planning commissions, housing authorities, regional transportation authorities, chambers of commerce, boards of realtors, educators, and health care providers).

5. The State Defendants will establish a Communications System for all stakeholders of this Agreement within 90 days of the signing of this Agreement. The System will include at a minimum the following elements:

- a. An ☺800" phone number for information on all provisions of the Agreement.
- b. A monthly newsletter to parents, staff and other interested groups as identified, highlighting progress and updated names and phone numbers for coordinators of each section of this Agreement.
- c. A published summary of each Quarterly Status Conference.

- d. Presentations by the Advisory groups TMAR, AAMR, and Trade Organizations.
- e. A summary annual report detailing areas of progress and areas of difficulty.

The Draft Communications System will be distributed to the parties for comments. All comments will be given good faith consideration.

6. State Defendants shall implement the Community Development Plan once it is developed.

D. Development and Implementation of Quality Assurance Components

1. State Defendants shall survey all community-based programs and facilities operated or supported by state funds in which former residents of the centers are placed pursuant to this Agreement at least annually to determine compliance with requirements of this Agreement and their ISTPs. System reviews of the quality of services and supports available to these former center residents also must occur on an annual basis in accordance with the provisions of Section X.A. State Defendants shall ensure that all deficiencies found in community placements are remedied promptly. The requirements of this Agreement shall be reflected in any future contracts or agreements or any renewal or amendment of a contact agreement with service providers and vendors. State Defendants shall address continuing deficiencies in community placements by ensuring compliance by the service providers and vendors with this Agreement.

2. The Director of TQI shall develop and disseminate annually to citizens, their families and guardians a consumer satisfaction survey. The first such survey shall be sent out within three months of the filing of this Agreement with the Court. The Director of TQI shall be responsible for collecting and collating the responses to those surveys, and the State Defendants shall take action to resolve concerns expressed in the surveys.

3. All developmental centers, community-based programs and facilities covered by this Agreement shall meet state and local licensure requirements, DMHMR regulations and other applicable codes. State Defendants shall also ensure that all such community-based programs meet the requirements of State Defendants' waiver plan and State Defendants' most current Quality Assurance Guidelines for Community Mental Retardation Services, consistent with this Agreement.

4. This Agreement contemplates that the quality of support and services provided in the developmental centers and in the community will be assured by a variety of formal and informal means, including:

- a. State Defendants' existing policies and procedures;
- b. the development and implementation by DMHMR of revised quality assurance policies and guidelines pursuant to TQI and this Agreement;
- c. further education of citizens, their families, support staff and the public regarding their rights and responsibilities;
- d. the establishment of and oversight by the TQI Director;
- e. the establishment of and oversight by the Independent Support Coordinators;



- f. the involvement and oversight by advocates;
- g. the establishment of and oversight by the Quality Review Panel; and
- h. the establishment of and oversight by a statewide network of trained investigators reporting to the Investigations Coordinator in the Office of Investigations.

5. For the first two (2) years following this Agreement, State Defendants shall conduct a thorough mortality review of deaths of any citizen in the community. Thereafter, State Defendants shall conduct thorough mortality reviews of suspicious or unexpected deaths. On a quarterly basis, the Director of TQI shall compile morbidity and mortality data.

E. Employee, Vendor and Community Education

1. Within 120 days of approval of this Agreement, State Defendants shall develop and submit to the parties and the court a training plan to develop the skills and competencies required for implementation of this Agreement. If any party objects to the plan, the parties shall meet and confer to resolve any objections.

2. All training required by this Agreement shall be conducted by individuals with demonstrated expertise in the particular field, documented as to time, duration, attendance and results, and all training, unless for good cause, shall be competency-based. State Defendants shall document each training session and identify persons trained. All new employees shall be provided appropriate training in a timely manner.

## VI. Institutional Care and Services

### A. Staffing and Staff Training

1. State Defendants shall ensure that a sufficient number of qualified nurses, physicians, psychiatrists, psychologists, registered physical therapists, and other staff are employed at each developmental center to provide adequate and appropriate care and services to the citizens and to fulfill the requirements of this Agreement.

2. State Defendants shall employ a sufficient number of registered and licensed practical nurses to provide adequate nursing services to citizens. The use of temporary staff and staff overtime shall be kept to an absolute minimum. Within three months of the signing of this Agreement, State Defendants shall fill all nursing vacancies. Thereafter, the State Defendants shall use one month of their best efforts to see that vacancies are filled within one month of their occurrence. State Defendants shall ensure that all staff are appropriately trained. This training will include training all clinical and direct care staff to recognize signs of mental illness and training all medical staff and direct care staff in emergency procedures. Nurses will monitor regularly citizens' health status, including changes in activity levels, weight gain or loss, skin tone and color, muscle tone, gait, movement, sleep and unusual incidents. They will coordinate the identification and communication of health concerns, and will teach and train citizens to participate in their own health care and in health care decision-making.

3. State Defendants will employ a Chief Behavior Analyst at each institution with the following qualifications: a) a Ph.D. in psychology specializing in applied behavioral psychology, and b) experience assessing the behavior treatment needs, including functional analysis, of developmentally disabled persons with severe maladaptive behavior, developing, implementing and evaluating individual Behavior Treatment Programs (BTPs) for such individuals, and supervising other behavior analysts in these professional practices.

4. State Defendants shall employ the services of Masters level behavior analysts sufficient to provide adequate behavioral services to all citizens. Behavior analysts shall ensure that citizens have behavior plans and adequately trained staff; that behavior programs are implemented and documented; and that outcomes of behavior programs are evaluated and revised by the team when necessary.

5. Absent agreement of the parties, State Defendants shall employ qualified primary care physicians sufficient to at least meet a physician to citizen ratio of 1 to 100 at each regional center. State Defendants shall employ a qualified medical director for each center, who will not be counted in this ratio.

6. State Defendants shall employ or retain the services of qualified medical specialists to provide adequate and appropriate care and services to all citizens who need such care and services.

7. State Defendants shall employ or retain the services of qualified

Physical Therapists (PTs), Occupational Therapists (OTs) and Certified Physical Therapy Assistants (CPTAs) / Certified Occupational Therapist Assistants (COTAs) to provide adequate and appropriate care and services and hands-on interventions to all citizens who need such care and services.

8. State Defendants shall train all medical staff in medical emergency procedures. State Defendants shall also train Development Technician Trainers (DTTs) and Developmental Technicians (DTs) who regularly provide direct care services in basic emergency procedures, i.e., First aid, CPR and the Heimlich maneuver. The State Defendants shall evaluate, through the use of drills, the competence of all participating staff to perform emergency medical procedures, document such evaluations and provide such additional training as the evaluations indicate is necessary to ensure staff competence in emergency procedures. Further, the State Defendants shall make medication and equipment commonly used in emergencies readily available to qualified staff in each residential unit.

B. Health Care

1. State Defendants shall provide to citizens adequate health care, including adequate and appropriate medical, nursing, dental and mental health care, and physical and nutritional management services, and medical specialty services.

a. State Defendants shall conduct thorough mortality reviews of every citizen death. Absent agreement of the parties, the mortality reviews shall be completed within forty-five (45) days of the death, and shall include specific

improvement plans as indicated. Each Center's medical director shall be responsible for implementing improvement plans and ensuring that the needed data collection systems are in place.

b. State Defendants shall hire and utilize a consultant to conduct external peer reviews of medical and nursing services at least annually. The results will be used to evaluate State Defendants' medical and nursing practices and training needs.

c. The medical and nursing directors at each center shall develop and implement a bi-monthly internal peer review process. Results of the review will be provided to the center superintendent and the TQI director.

d. State Defendants shall coordinate an interfacility peer review process undertaken by professional staff of the centers touring the other centers. One inter-facility peer review per quarter will be conducted. Each center will send designated physicians and nurses to another center to conduct a peer review of that center. The schedule of such reviews shall be varied so that representatives from each center review all others. Summation conferences will follow each of these internal peer reviews and the results will be submitted to the center administrators and the TQI Director. The results will be used to improve health outcomes of citizens and to evaluate the training needs of medical personnel.

e. State Defendants shall ensure that primary care physicians

are responsible for and oversee the provision of adequate and appropriate health care for the citizens for whom they are responsible. Toward this end, primary care physicians shall, in a timely manner: 1) evaluate each citizen for whom they are responsible; 2) determine what specialized medical services these citizens need and ensure that citizens receive such services; and 3) take appropriate action to respond to recommendations of outside medical specialists and laboratory findings, documenting what action has been taken and the reasons therefor. Physicians also will assure that citizens have coordinated but minimally intrusive health care; that they have routine side effects screening; that citizens' health changes are brought to the attention of the physician in a timely manner; that citizens have routine blood studies; and that they have regular access to medical care and routine examinations.

f. For each citizen, medical staff shall:

(1) Develop a comprehensive problem list and an annual medical plan that identifies the citizen's health goals and the expected outcomes for care and treatment; and will participate actively in the interdisciplinary team process to prevent health risks to citizens, including, but not limited to, the prevention of injury and abuse.

(2) Provide adequate and appropriate medical management for citizens with feeding disorders, and work cooperatively with the Clinical Nutritional Management Teams, appropriate medical and dysphagia specialists and the interdisciplinary team to define and move toward expected eating

outcomes, ensure that citizens are fed safely and properly obtain needed medical and/or surgical interventions, and receive adequate nutrition and hydration.

(3) Provide adequate and appropriate medical management, including timely and appropriate interventions or referrals for citizens with acute orthopedic trauma or chronic orthopedic disorders, and work cooperatively with physical and occupational therapists and the interdisciplinary team to prevent citizens from suffering unnecessary pain, disfigurement, or loss of mobility and function, with the understanding that the goal of citizens' physical therapy programs shall be to enhance the capacity of the individual to function, i.e., to enhance the ability of the person to move, sit upright and participate in activities, and to prevent loss of function and range of motion.

(4) Provide adequate and appropriate medical management for citizens with seizure disorders, and work cooperatively with neurology consultants and the interdisciplinary team to ensure the citizens receive treatment that is therapeutic, safe, and effective.

(5) Provide adequate and appropriate medical management for citizens who have behavior disorders or who are receiving psychotropic medications; and work cooperatively with the interdisciplinary team and with staff and consulting psychologists, behavioral analysts, psychiatrists, and mental health counselors to ensure citizens receive appropriate and effective treatment services.

(6) Provide adequate and appropriate emergency medical care.



(7) Participate in transition planning and implementation of the transition plan for citizens for whom they are the attending physician, including assessing the medical strengths and weaknesses of the citizen being considered for transition, analyzing the medical resources that the citizen may require in the community, and assisting in the determination of the appropriateness of the community setting chosen for the citizen.

(8) Ensure that all mechanical restraints are safe, medically appropriate for the individuals on whom they are used, reviewed by the team on a regular basis and used consistent with professional judgment.

g. State Defendants will ensure that medical specialists provide adequate and appropriate medical care, and that their recommendations are given prompt and express consideration.

h. Citizens receiving two or more anticonvulsant medications, or citizens who have had five or more seizures in the preceding 12-month period will be examined by a consulting neurologist at least annually. Primary care physicians will refer citizens for neurology consults more often when appropriate.

i. State Defendants shall ensure that citizens with seizures are prescribed the fewest number of different medications appropriate for effective seizure management. Citizens who have been seizure free for two years or more will be assessed, in consultation with the interdisciplinary team and a neurologist, as to the

appropriateness of medication withdrawal. The decision as to the appropriateness of medication withdrawal, as well as any withdrawal plan and results, will be documented in the citizen's medical records.

j. State Defendants shall not administer medications by the intramuscular (IM) route for citizens in status epilepticus. Citizens in status epilepticus shall be immediately transported by ambulance to emergency care at an acute care hospital. Anticonvulsant medications will be administered to citizens in status epilepticus via intravenous (IV) or rectal routes only. Citizens who are potentially at risk for status epilepticus or to periodic prolonged series of seizures will be identified, and a plan developed by the primary care physician and neurologist which sets out planned or recommended treatment for that individual if status or a series of seizures occur.

k. State Defendants shall track seizures by accurately recording each seizure.

l. State Defendants shall develop, negotiate, and implement agreements with hospitals that routinely serve citizens to require the timely transfer of adequate and accurate records to and from acute care hospitals.

m. State Defendants shall ensure that center physicians appropriately prescribe medications and monitor blood levels and drug side effects.

n. State Defendants shall provide citizens with appropriate

and adequate dental care. Citizens will have access to preventative and restorative treatment. Staff will be trained to support citizens' dental needs.

2. Mental health care - State Defendants shall provide adequate and appropriate mental health care to citizens who need such care, including psychiatric and behavioral services. State Defendants shall ensure that the use of psychotropic drugs is appropriate and linked to a mental health diagnosis, and that medications of any kind shall not be administered as punishment, in lieu of a training program, or for the convenience of staff.

a. State Defendants shall document that, prior to using the psychotropic medication, other, less restrictive techniques have been systematically tried as part of a training program and have been demonstrated to be ineffective. Such documentation in the citizen's records must include reliable behavioral data and analysis of outcomes for the citizen.

b. Prescription medication may only be administered upon order of a physician and psychotropic medication only upon order of a physician after consultation with a psychiatrist, except in case of an emergency use of psychotropic medication, which must be reviewed by the psychiatrist within 24 hours of the order being written. The psychiatric consult shall be obtained to determine whether the use of any medication is supported by a diagnosis of mental illness (or other medical reason), that the diagnosis is justified by the citizen's history as set forth in his/her written record and current symptoms and that the dosage is appropriate. In making

this determination, the consulting psychiatrist shall make a complete assessment of the citizen, including observation of the citizen, examination of the citizen's medical and behavioral record, and consultation with the citizen's primary care physician, psychologist, behavior analyst, and other IDT members, including direct care staff.

c. State Defendants shall institute and implement policies which require the recordation in each citizen's record and the separate report to appropriate professional staff of any medication error or adverse drug reaction. This information shall be used for trend analysis, and identification of corrective measures for error rates exceeding professional standards.

C. Physical, Occupation and Nutritional Management and Services

1. State Defendants shall ensure that all citizens who are nutritionally at risk are fed and otherwise cared for safely, adequately, timely, and appropriately. State Defendants will not allow dangerous feeding practices and any feeding practice that poses an undue risk to harm to any citizen. State Defendants will not allow citizens to be fed in any unsafe position or faster than they can safely chew and swallow food.

2. State Defendants will establish one Clinical Nutritional Management Team at each developmental center for every 25 citizens requiring nutritional management.

3. State Defendants shall develop, in accordance with the treatment

strategy, and implement a nutritional management plan for each citizen including: positioning the citizen (before, during, and after mealtimes) and specific instructions to the person feeding and/or supervising the citizen, and information to food service staff regarding consistency of diet or other dietary related information.

4. State Defendants shall train the staff who will feed the citizen to competency on each specific feeding technique, procedure, and/or instruction contained in the individual nutritional management plan, including positioning. No staff person shall be allowed to feed a citizen with documented dysphagia or related problems until the staff person has demonstrated competency in the particular feeding techniques, procedures, and/or instruction for the citizen contained in the citizen's individual nutritional management plan.

5. State Defendants shall monitor the staff during mealtimes to ensure that the nutritional management plan is implemented as designed.

6. State Defendants shall, at least quarterly, have the Nutritional Management team review each citizen's nutritional management plan and the implementation of the plan, assess the effectiveness of the plan, report on progress to the Inter-Disciplinary Team, and make revisions to the plan, as needed, to improve effectiveness and ensure that the citizen is fed safely and properly.

7. State Defendants shall develop and provide, and fabricate if necessary, professionally designed therapeutic support devices and services, including

adaptive equipment, positioning, and other assistance necessary to protect each citizen from harm and regression. Devices whose continued use will have the effect of increasing deformity shall not be used, unless expressly permitted by the IDT.

8. State Defendants shall provide adequate and appropriate physical management and occupational therapy services to all citizens who need such services, including proper positioning, adequate equipment, including wheelchairs, and adequate physical therapy interventions. The goal of each citizen's physical therapy program shall be to enhance the capacity of the individual to function, i.e., to enhance the ability of the person to move, sit upright and participate in activities, and to prevent loss of function and range of motion.

9. State Defendants shall ensure that PT, education and direct care staff are trained to enable them to properly position citizens in their wheelchairs or other adaptive equipment. State Defendants shall initiate regular, professionally designed and taught in-service training for direct care workers and other staff, including orientation training for managers and administrators in positioning, transferring, and implementing physical therapy programs for physically handicapped citizens.

10. State Defendants shall ensure that staff actually monitor and correctly position citizens throughout the day and implement a quality assurance program to monitor that citizens are correctly positioned according to their individual

plans throughout the day.

D. Active Treatment

1. State Defendants shall develop and deliver a professionally designed, consistently and aggressively implemented program of training, treatment, and other services for each citizen to enable him or her to function with the greatest self-determination and independence possible.

2. State Defendants shall provide adequate Applied Behavior Analysis (ABA) services for all developmental center citizens. State Defendants shall develop and implement for each citizen an individualized support plan that is designed by a competent and appropriately constituted IDT, that is based on functional assessment and consistent with the person's vision of his or her future, that develops or maintains his or her functional skills, including skills in the areas of communication, self-help, safety and daily living and that reduces or eliminates unreasonable risks to personal safety or unreasonable use of bodily restraints.

3. State Defendants shall implement procedures to assess and evaluate each citizen's progress on behavior and training programs, including the collection of reliable data on the target behaviors and necessary staff training.

4. State Defendants shall develop and implement procedures to review the progress of each citizen at least quarterly in order to ascertain the adequacy and effectiveness of the training programs. Review of the citizen's progress under a training program that includes a reduction component to reduce aggressive or

dangerous behaviors must occur at least monthly, or more frequently in the case of severe self-injury or aggression, in order to ascertain the adequacy and effectiveness of the behavior programs. Programs found upon review to require modification must be modified.

E. Restraints and Restrictive Behavioral Management Practices

1. State Defendants shall provide a safe environment for each citizen, and shall ensure that unnecessary or inappropriate restraints are not used on citizens.

2. State Defendants shall ensure that every behavior program that utilizes restraint or time out must specify: i) the behavior(s) that initiates the use of the restraint or time out; ii) positive behavior(s) to be taught to the citizen to replace the behavior(s) that initiates the use of the restraint or time out or other program to reduce or eliminate the use of the bodily restraint or time out; iii) the restriction, i.e., restraint or time out authorized, including the restriction's duration; iv) the professional responsible for the program and the direct care workers authorized to implement it; and, v) the frequency with which behavioral data is to be recorded by direct care workers.

3. State Defendants shall, in order for a restrictive procedure to be included in a behavior treatment program, document in the citizen's record that other, less restrictive techniques were systematically employed as part of a professionally designed training program and were ineffective.



4. State Defendants shall document each time restraints or time out is used and the length of time for each use. If emergency restraints are used for a citizen two or more times in one month, the interdisciplinary team shall meet to review the use of emergency restraint. The BMC shall conduct a monthly review of all use of restraint and all use of time out. The Human Rights Committee shall also review restraint usage on a regular basis. Each committee shall make recommendations with respect to the appropriateness of the use and continued use of the restraint. Such recommendations shall be promptly implemented.

5. Prone restraints or take downs shall not be employed.

6. Unless approved by the Human Rights Committee, citizens' personal property and freedoms shall not be used as contingencies for behavior management programs.

F. Provision of Care to Citizens With Hearing, Vision or Communication Needs

1. State Defendants shall provide adequate and appropriate hearing, vision, and communication services and necessary technology to citizens.

2. State Defendants shall assess, evaluate, develop, and implement programs, including the use of augmentive devices as needed, for each citizen with communication deficits, including deaf or hearing impaired citizens, to teach appropriate communication skills. For hearing impaired citizens for whom amplification is effective, amplification devices shall be provided, along with any

training necessary to allow the citizen to use or become accustomed to wearing such devices. On units housing a citizen who is being taught sign language, the State Defendants shall make best efforts to have at least one direct care staff person on each shift who knows or is learning sign language.

3. State Defendants shall assess and evaluate each citizen with a vision impairment to determine his or her need for eyeglasses. Where needed, eyeglasses shall be provided along with training designed to ensure the citizen can and does wear them. State Defendants must provide training and services for individuals who are blind and provide assistive devices, such as canes or other trailing devices.

G. Physical Environment

1. State Defendants shall provide for each citizen a safe environment that meets the needs of the citizen and ensures the greatest amount of freedom and opportunity with the least amount of risk.

2. State Defendants shall ensure that all local, state and federal codes and regulations governing fire safety, health, infection control and sanitation are complied with.

3. State Defendants shall ensure that the environment is adequately hazard free, clean and in good repair.

4. State Defendants shall comply with the quality assurance mechanisms outlined in State Defendants' TQI.

H. Resident Property

1. State Defendants will ensure citizens' right to own, keep and use reasonably personal possessions and property.

## VII. Protection From Harm

A. State Defendants shall immediately act to ensure safe and humane living environments for citizens and protect citizens from abuse, mistreatment and neglect.

B. The State Defendants shall identify immediately all citizens who are at risk of serious harm or causing serious harm to others, because of significant health care needs, self-injurious or aggressive behavior, or any other cause. Those persons' teams shall meet immediately to develop strategies and interventions to reduce the risk of harm. The team shall review the actions taken and the outcomes for the person at least monthly and revise the person's plan and services if indicated.

The Chief Behavior Analyst or consulting behavior analyst, the interdisciplinary team or a physician shall require adequate staffing to ensure safety. The assigned staff shall be specially trained in the appropriate behavior management and teaching techniques applicable to the citizen for whom they are providing the coverage.

C. State Defendants will provide adequately trained and supervised direct care staff to meet a 1:4 (day), 1:4 (evening) and 1:8 (night) staff-to-client ratio at each developmental center. All direct care staff will be trained to recognize and report abuse, neglect, and mistreatment. This ratio shall be calculated by counting only staff actually on duty at each center. Staff engaged in housekeeping or other chores may not be counted to meet the staffing ratio. Furthermore, staff assigned to 1:1 interaction with a particular citizen may not be counted in the staffing ratio for the other citizens in the area.



D. State Defendants shall design and implement a data collection system for tracking incidents of injury and suspected or alleged abuse or neglect statewide.

E. State Defendants shall prepare a monthly injury report for each center that describes type of injury, citizen(s) involved, location, shifts and staff present or on duty for the purpose of identifying factors leading to such injuries. All reports, including recommendations to reduce the incidence of injury, shall be provided to the Investigators and reviewed by the Abuse and Neglect Prevention Committee and the Behavior Management Committee of each facility for that facility's injuries.

F. State Defendants shall ensure citizens are protected from abuse, neglect, and preventable injuries, unnecessary restraint and restrictive procedures, and unnecessary medication through prevention, reporting, investigating and resolution techniques. Prevention includes elements of staff training and supervision. Systematic review of information about abuse, neglect and injuries shall occur. The causes of abuse, neglect and injuries shall be identified so that the conditions and practices contributing to the occurrence of such incidents will be eliminated.

G. The State Defendants shall establish and adequately staff an Office of Investigations (OI). The OI will have an Investigations Coordinator who will coordinate all investigations in the community and in the institutions. The Investigations Coordinator must have experience in investigations and law enforcement, and will report directly to the Assistant Commissioner for Mental

Retardation Services. The Investigations Coordinator shall establish regular communications with the Tennessee Bureau of Investigation, the Tennessee Comptroller's Office and local and federal law enforcement. Toward this end, the Investigations Coordinator shall submit quarterly reports on the activities of the OI to TBI for at least the first two years after the signing of this Agreement unless otherwise shortened by the parties. Confidential copies of these quarterly reports shall also be provided to counsel for the parties. The Investigations Coordinator, at his or her discretion, may redact from the copies sent to the parties any information the release of which the Investigations Coordinator believes may compromise an ongoing investigation. The United States Department of Justice, under its responsibilities as a law enforcement agency, reserves the right to request and obtain any redacted information.

H. State Defendants shall assure that the Office of Investigations is sufficiently staffed at the regional level to promptly and fully investigate all allegations of abuse and neglect. The investigators will be responsible for investigating abuse, mistreatment, and neglect, including injuries they suspect may have resulted from abuse, mistreatment, or neglect and all serious injuries of an unknown cause. For purposes of this section, the terms abuse, mistreatment and neglect shall be interpreted broadly. The Regional Investigators shall report directly to the Investigations Coordinator.

- I. The qualifications of Investigators will include:
1. Professional training and experience in conducting investigations;
  2. Demonstrated skill in investigation techniques and in interviewing; and
  3. Training on conducting investigations in institutions serving developmentally disabled persons.

Such qualifications and training may be obtained after an Investigator is hired, but before the Investigator is assigned a case to investigate.

J. Investigators will publish prominently their names, phone numbers, and current photographs in all residential, program, and office areas and distribute relevant written materials to all citizens, staff, vendors, parents or guardians, advocates, and appropriate law enforcement and community groups. Investigators will report in writing all allegations of abuse, mistreatment, or neglect and the Investigator's determination that the allegation was founded or unfounded to the Investigations Coordinator, and the center's Superintendent and Abuse and Neglect Prevention Committee, or the DMHMR regional director and the head of the responsible community service provider.

K. The State Defendants will form an appropriately constituted Abuse and Neglect Prevention Committee at each of the regional centers to provide effective

review of abuse and neglect allegations and make recommendations for corrective actions.

L. All direct care staff will be trained to appropriately supervise citizens in order to reduce abuse, neglect and mistreatment. All direct care staff will be trained to recognize and report abuse, neglect and mistreatment.

#### VIII. Education for School Age Citizens

A. The State Defendants shall, within the time frames set forth, take the following measures to comply fully with the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §§ 1400 et seq., and applicable state law. The requirements of this section of the Agreement shall apply to all school-age children currently or formerly residing at the developmental centers.

B. State Defendants shall retain the services of a consultant(s) with proven expertise in the field of special education services to evaluate and make recommendations regarding school services to citizens. State Defendants shall implement those recommendations to the extent possible and provide the consultant reports to each involved local education agency (LEA[s]). State Defendants will assist LEA[s] in learning and accessing current practices in education under the IDEA and its implementing regulations.

C. The State Defendants shall assure that students are placed in the least restrictive environment appropriate for each individual child and assure the availability



of supplementary aids and services to each student/child when appropriate including modification and adaptation of the regular curriculum, integrated therapies and support from paraprofessionals.

D. The State Defendants' consultant's study shall include the appropriateness and practicality of providing extended school year services and contracting with the local educational agency on services for students with challenging behavior.

E. Upon entry of the Order approving this Agreement, State Defendants shall place all school age children in appropriate educational programs as specified in their IEPs. Whenever appropriate and consistent with the child's IEP and placement in the least restrictive environment, the child shall be educated in local public school systems. State Defendants shall provide sufficient consultation expertise to the LEAs.

#### IX. First Amendment Rights

A. A citizen, advocate, guardian or state employee may not be precluded or discouraged from exercising his or her rights under the First Amendment to the Constitution of the United States.

B. State Defendants shall develop and implement within 30 days, in consultation with the parties, a policy on enabling class members to communicate, associate and assemble with others of their choice, and enabling class members to meet and speak privately with friends and others of their choice.

C. State Defendants shall immediately communicate this policy to all staff members at state developmental centers and to contract community services agencies and shall include a provision as a requirement in all future contracts (including amendments) with community services agencies serving class members, which provision shall provide that community services agencies agree not to preclude or discourage class members from exercising their First Amendment rights.

D. State Defendants shall within thirty (30) days establish a process of disciplinary sanctions for staff members who violate this policy by including such violations as an offense for which disciplinary action may be taken under State Defendants' personnel policies.

E. State Defendants shall allow class representatives, other advocates and members of religious organizations and community organizations reasonable opportunities to communicate with all class members and shall afford all class members reasonable opportunities to participate in community activities.

X. Monitoring and Enforcement

A. Quality Review Panel

1. The Quality Review Panel (Review Panel or Panel) shall be constituted by three individuals mutually agreed upon by the parties with recognized expertise in the field of developmental disabilities, transitional and community services. Two members will work part-time. The third member will Chair the Panel and will work full-time in that position for at least the first two years following the Court's entry of this Agreement. For selection of the members of the Panel, each

party may submit a list of three names with their respective resumes. The parties shall consult on all of the names submitted and agree upon the three members for the Panel. If the parties are unable to agree, the Court (Magistrate Judge) shall select a panel of experts from the persons nominated by the parties. If any of the Panel members are unable to continue to serve, his or her replacement shall be selected in the same manner as described above.

2. The purpose of this Panel is to assist in the implementation of this Agreement. The Panel will have two primary functions: i) to review placement decisions and planning; and ii) to assist in monitoring the implementation of this Agreement. It is intended that the Panel will pursue a problem-solving approach so that litigation and disagreements can be minimized and the energies of all interested persons can be focused on the task of meeting the needs of the citizens and achieving the outcomes required by this Agreement. To these ends, the Review Panel shall develop a set of policies and procedures consistent with this Agreement and professional standards, within 30 days of the seating of the Panel, in conjunction with the parties and subject to their agreement. These policies and procedures shall be documented in writing and distributed to all parties and the Court (Magistrate Judge). The Review Panel may modify these policies and procedures, including the methodologies for reviews discussed below, as appropriate to meet the requirements of different stages of the implementation of this Agreement. Any party may recommend such modifications to the Review Panel. All modifications of these policies and procedures must be made in writing and are subject to the parties' agreement. Any

disputes concerning these policies and procedures that cannot be resolved shall be addressed first through mediation conference with Court/Magistrate Judge with notice to all parties.

3. The Panel will operate as follows:

a. The Panel will meet at least quarterly to carry out its responsibilities as outlined in X.A.2. and shall meet at such other times as it deems appropriate. The State agrees to provide the Review Panel with sufficient resources to perform its functions under this Agreement, including resources to employ experts and staff. Within 45 days of the appointment of the full Review Panel, the Panel shall submit an annual budget to the State for review and approval, and, thereafter, shall submit a budget on an annual basis two months prior to the beginning of the proposed funding period. This budget will show the resource needs and costs associated with planned activities of the Review Panel for the coming year. This budget should provide sufficient detail such that proposed amounts for spending and resource allocation by area of activity are set out. These planned activities will be consistent with the responsibilities and duties of the Review Panel as described in this Agreement.

The State and Review Panel shall agree on methods for clear documentation and accountability regarding Review Panel expenditures including procedures for ensuring that Review Panel members receive timely compensation from the State. Review Panel members shall receive appropriate and timely compensation from the

State Defendants and shall be promptly reimbursed by State Defendants for services and reasonable out-of-pocket expenses incurred in performing their duties.

Reimbursement rates for out-of-pocket expenses, including travel, shall be consistent with existing State regulations. The annual cost of the activities of the Review Panel will not exceed a cap of \$550,000 without an approved modification. In the event that unanticipated circumstances give rise to the need for budget modifications during the year, the Review Panel shall submit to the State requests for modifications of its annual budget. Budget modifications include substantial changes or increases in spending and resource allocations in the existing budget as well as expenses that will exceed the annual cap amount. Total requests for modification shall not exceed 20% of the annual budget amount. The State also agrees to provide the Panel with additional \$50,000 of in-kind services and support (copying, phones, office materials and space) annually. If the State and the Review Panel are unable to resolve budget and related issues, they will pursue resolution through mediation conference with the Court (Magistrate Judge) with notice to all parties. If the Review Panel feels that its ability to perform its duties is being constrained by the State's actions concerning budget and related issues, then the Review Panel may seek immediate review and relief through the mediation process herein described with the Court (Magistrate Judge) with notice to all parties.

b. The State agrees that the duties of the TQI Coordinator at each developmental center shall include assisting the Review Panel in the performance

of its functions. If this arrangement proves to be insufficient, the State and the Review Panel shall determine a mutually agreeable alternative for providing the services of an ombudsperson at each developmental center.

c. Consistent with section V.A.9 of this Agreement, the ISTP and Independent Support Coordinator's placement certification for each citizen will be filed with the Panel. The Panel will review each individual placement prior to such placement occurring. The Panel shall complete its reviews and report to the IDT within twenty (20) days of receiving the ISTP and certification from the IDT, unless the Panel requests additional time for a particular placement. The Panel's review will include review of relevant supporting documentation and issues raised by members of the IDT. Such reviews shall determine the adequacy of the placement and ensure that the placement meets the individual needs of each citizen. Where the Panel determines that there are major deficiencies with a placement, the placement shall not occur until all the identified major deficiencies are corrected. Any other deficiencies shall be corrected in a timely manner.

For the first six months following the seating of the Panel, such reviews will be conducted by all three members of the Panel, but thereafter such reviews may be conducted only by the Chair, consulting as the Chair deems appropriate with the other members of the Panel. Reviews shall be reduced to writing in any case where deficiencies are identified and such deficiencies shall be specified with particularity.

State Defendants shall correct such deficiencies in a timely manner.

d. The Panel will assist in monitoring compliance with this Agreement. System reviews of the quality of all services and supports provided to the citizens in each of the developmental centers and in the community shall be conducted by the Panel on an annual basis. These reviews shall be conducted separately and staggered every six months, with the first review of all the institutions occurring within six months of the entry of this Agreement and the first review of the community services provided to each citizen occurring six months thereafter.

Within two months of the seating of the Review Panel, the Panel shall develop, in conjunction with the Parties and subject to their agreement, a written, professionally-based, evaluation methodology to be used for their annual system reviews of the quality of all services and supports provided to citizens in the developmental centers and in the community. This methodology shall include at least the following items: 1) the number and type of experts the Panel anticipates will assist in evaluating compliance; 2) the sampling approach and data collection methods; 3) the approach and procedures for site visits, site visit preparation, and on-site data collection; 4) the anticipated number of days and types of activities conducted on-site to evaluate compliance; 5) the anticipated types of documents that will be reviewed; and 6) methods for measuring and assessing compliance and progress with this Agreement. The State shall have this methodology for at least four months before the Review Panel conducts the initial review of either the institutions or the community.

This methodology is intended to give a framework for the Panel's reviews, but shall in no way operate to amend, alter or otherwise displace the requirements of this Agreement. The Review Panel may modify their methodology. The provisions set out above in Section X.A.2. regarding modifications of the Panel's policies and procedures shall apply to modifications of the review methodology.

In conducting their reviews, the Review Panel shall work cooperatively with the State and, to the extent possible, notify the State of their observations and conclusions as reviews take place. The Review Panel shall submit to the parties and to the Court a written report for each review that details their methodology, findings and recommendations. The focus of these reports shall be on compliance with this Agreement, but the reports shall also contain appraisals of the progress made by State Defendants during the review period. The State shall ensure that all deficiencies are remedied promptly. The parties may wish to discuss these reports within the context of the provisions of scheduled quarterly status conferences with the Court. If disputes arise as to the scope, findings, or recommendations of these reports, the parties shall make every effort to resolve these informally. Any disputes that cannot be resolved shall be addressed through the processes described in section B.1. of this section, below.

e. There shall be no ex parte communications between the Review Panel and the Court. Ex parte communications among the Review Panel and the parties are permitted.



f. In the event that the State has concerns about whether the activities of the Review Panel are unreasonable or inconsistent with the terms of this Agreement and is unable to resolve these concerns informally with the Review Panel, the State shall seek to address these concerns through mediation conference with the Court/Magistrate Judge with notice to all parties.

B. Reporting and Enforcement

1. If any party believes that State Defendants are failing to comply with this Agreement, or with any part thereof, the party must confer with State Defendants in a good faith effort to attempt to reach an agreement regarding corrections of any of the alleged deficiencies prior to bringing an enforcement action. If the parties are unable to agree, any party shall request a mediation conference with the Magistrate Judge assigned to this case. This requirement is subject, however, to the following emergency exception. Any party may bring an action for immediate injunctive relief if the party believes that there exists an imminent or continuing risk of serious harm to any citizen that is not being addressed appropriately by State Defendants.

2. Nothing in this Agreement shall prevent a party from ultimately seeking redress with the Court in the event that efforts at conciliation and mediation are unsuccessful. If mediation or further injunctive relief prove unsuccessful, a party may seek additional relief from the Court.

3. The parties shall hold quarterly status conferences with the Magistrate Judge assigned to this case to review State Defendants' compliance with the Schedule of Implementation, incorporated as Attachment A to this Agreement.

4. State Defendants shall provide to the parties and the Panel copies of the TQI internal and external peer review reports, and any annual surveys, including the surveys of the community-based programs and facilities referenced in V.D.1. State Defendants shall provide to the parties and the Panel on a monthly basis: primary documentation regarding deaths (including death certificates, death summaries, discharge papers, investigative reports, and preliminary and completed autopsies); statistical summaries of incidents and injuries; relevant summary information on hospitalizations and code blues; summaries of restraint usage; completed abuse and neglect investigation reports and documentation of any disciplinary or follow-up actions taken. State Defendants shall immediately notify the parties and the Panel of any deaths or allegations of serious abuse or neglect involving serious injuries or incidents.

5. The Panel, the parties to this Agreement and their attorneys, consultants and agents shall have reasonable access to all information, records, buildings and areas, including those of providers, and shall be permitted to interview any citizen, employee of State Defendants or of any provider, at reasonable times and places. The Panel and the parties are not required to give State Defendants advance notice of their intent to visit any facility. State Defendants may seek relief from the

Court in the event that State Defendants believe the Panel or any party's monitoring activities are unreasonable or inconsistent with this Settlement Agreement.

6. State Defendants shall bear all costs related to copying or otherwise supplying the parties or the Review Panel with documents requested by the parties or the Panel that relate to the State Defendants' compliance with this Agreement. The identities of citizens shall be kept confidential, and neither the names nor likenesses of citizens shall be publicized without their permission except that the parties may refer to a citizen by the citizen's first name and last initial.

7. Nothing in this Agreement shall preclude any party from conducting additional discovery pursuant to the Federal Rules of Civil Procedure, such as, but not limited to, depositions or requests for admissions, on matters relating to enforcement or compliance with the Agreement. State Defendants may seek relief from the Court in the event that State Defendants believe a party's discovery activities are unreasonable or inconsistent with this Settlement Agreement.

8. Retaliation against any individual, employee, family member or citizen based on communication with the Panel or any party or party representative is strictly prohibited.

A notice to this effect must be posted in all locations where citizens live and employee and public notices are posted. The falsification of records, data, correspondence or other information required for determining the State Defendants' compliance with

this Agreement is strictly prohibited and will be a violation of this Agreement, subjecting State Defendants to contempt sanctions by the Court. A notice to this effect will be posted in all locations where employee and public notices are posted.

9. At least for the first three years following the signing of this Agreement, the Tennessee Comptroller's Office shall conduct or shall contract for two annual audits. The first audit will focus on the regional centers and will consist of two parts: an audit of citizen monies and personal property; and an audit of the operation of the centers. The second audit will consist of the same two parts, but will be focused on the community placements, including the services and supports. The results of the two annual audits shall be provided to the Court, and the parties.

10. The Court shall retain jurisdiction of this action for all purposes under this Agreement until this action is dismissed.

11. Any party to this Agreement may move to modify, amend or alter this Agreement at any time after entry of the Order adopting this Agreement.

12. After this Agreement has been in effect for at least three years, the State Defendants may petition this Court for termination of this Agreement on grounds that they have achieved and demonstrated their ability to maintain compliance with its provisions. Upon filing of such a petition, the parties shall have 90 days within which they may tour and respond. If no response is forthcoming, or if the parties agree, then the Agreement shall terminate. If any party does respond, the Review Panel thereafter

will conduct a review of the compliance issues raised by the petition and response(s), and report to the Court and the parties on the results of that review. The Court will conduct a hearing as soon as practicable thereafter. The State Defendants will bear the burden of showing that they have achieved and demonstrated their ability to maintain compliance with this Agreement.

After this Agreement has been in effect for at least two years, the State Defendants may petition this Court for termination of this Agreement in part. Such petition for partial termination shall be available only for demonstrating the achievement and maintenance of compliance with all of the provisions of Sections VI., Institutional Care and Services, and VII, Protection from Harm, with respect to institutional conditions at one or more of the three developmental centers covered by this Agreement. The procedures and burden of proof for such a petition shall be the same as those described in the preceding paragraph.